



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 132 3150]

BMW of North America, LLC; Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before April 20, 2015.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/bmwnorthamericaconsent> online or on paper, by

following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write “BMW of North America, LLC - Consent Agreement;

File No. 1323150” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/bmwnorthamericaconsent> by following the instructions

on the web-based form. If you prefer to file your comment on paper, write “BMW of North

America, LLC - Consent Agreement; File No. 1323150” on your comment and on the envelope,

and mail your comment to the following address: Federal Trade Commission, Office of the

Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580,

or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Svetlana Gans, Bureau of Consumer Protection, (202) 326-3708, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 19, 2015), on the World Wide Web at: <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 20, 2015. Write “BMW of North America, LLC - Consent Agreement; File No. 1323150” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or

foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/bmwnorthamericaconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “BMW of North America, LLC - Consent Agreement; File No. 1323150” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 20, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, a consent agreement applicable to BMW of North America, LLC ("respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The Respondent's MINI Division provides purchasers of new MINI passenger cars a Service and Warranty Information Statement ("Warranty Statement"). According to the FTC complaint, language in the Warranty Statement violates the Magnuson-Moss Warranty Act ("Warranty Act"), 15 U.S.C 2302(c), by conditioning warranty coverage on the consumer's use of genuine MINI parts and MINI dealers to perform maintenance and repair work.

The FTC enforces the Warranty Act, which regulates consumer warranties and the procedures used to resolve warranty disputes. The broad purposes of the Warranty Act are (1) to improve the adequacy of warranty information available to consumers, and thereby facilitate consumer choice; (2) to prevent deception; and (3) to improve competition in the marketing of consumer products. Among other things, the Warranty Act prohibits a warrantor from conditioning a consumer product's warranty on the consumer's use of an article or a service (other than an article or a service provided without charge) which is identified by brand, trade, or corporate name. 15 U.S.C. 2302(c) ("the anti-tying provision").

According to the FTC complaint, in connection with the warranty for certain MINI models, respondent has required owners to have routine maintenance, such as oil changes, performed by MINI dealers and to use genuine MINI parts. The complaint alleges that this requirement appears in two places in the Warranty Statement.

First, in order to have a warranty claim approved, owners must demonstrate that they obtained regular maintenance of their vehicles by having a MINI dealer place a stamp in the warranty booklet. See Complaint at ¶ 12. Second, the Warranty Statement states that it "is not obligated to pay for repairs that include non-genuine MINI parts" (emphasis added). Although respondent provides, with the purchase of its vehicles, a free scheduled maintenance program, many of the models have a three-year maintenance program, but a four-year new vehicle warranty. Thus, according to the complaint, there is one year during the warranty period in which consumers must pay for their maintenance and repair work while being required to use MINI dealers and MINI parts to retain warranty coverage.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Part I prohibits respondent, in connection with the sale of any MINI Division good or service, from violating any provision of

the Warranty Act, including, but not limited to, the anti-tying provision. Part II prohibits respondent, in connection with the sale of any MINI good or service, from misrepresenting that vehicles, in order to operate safely or maintain value, must have maintenance work performed by a MINI dealer. Part II also prohibits respondent from misrepresenting any material fact concerning any warranty or maintenance requirements of any MINI good or service.

Part III requires respondent to send notices to all affected consumers informing them that their warranties are not conditioned on repair work being performed by MINI dealers or on the use of genuine MINI parts.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires respondent to maintain, and make available to the Commission upon written request, copies of Owner's Manuals and Warranty Statements for each motor vehicle sold by respondent. Part V requires dissemination of the order, now and in the future, to persons with responsibilities relating to the MINI Division and the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that respondent submit an initial compliance report to the FTC, and make subsequent reports available to the FTC, upon request. Part VIII is a provision "sunsetting" the order after twenty (20) years, within certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark
Secretary.

